

representative of a person engaged in providing ocean transportation or ocean transportation-related services for such commodities.

(i) For purposes of section 407(c)(4), the term “transportation-related services” means lightening, stevedoring, bagging or inland transportation to the destination point.

(ii) The prohibition does not preclude payment by ocean carriers of compensation or brokerage fees on a shipment-by-shipment basis as provided in governing tariffs or charter parties to persons performing freight forwarding or charter broking services under contract to the U.S. Government.

(2) Pursuant to section 407(d)(3) of Public Law 480, freight agents employed by A.I.D. under title I, II or III of Public Law 480 shall not represent any other foreign government during the period of their contract with the United States Government. This restriction applies both to charter brokers and freight forwarders whether they are prime contractors or subcontractors of A.I.D.

(3) This paragraph (g) does not apply to shipments booked by nongovernmental cooperating sponsors or their agents.

[57 FR 19766, May 7, 1992, as amended at 60 FR 36991, July 19, 1995]

#### **§ 211.5 Obligations of cooperating sponsor.**

(a) *Operational Plans.* Each cooperating sponsor shall submit a description of the programs it is sponsoring or proposes to sponsor to USAID or the Diplomatic Post for its approval. AID/W will prescribe the format and timing for submittals and provide final approval of the Operational Plan. This Operational Plan will include program purposes and goals; criteria for measuring program effectiveness; a description of the activities for which commodities, monetized proceeds, or program income will be provided or used; and other specific provisions in addition to those set forth in this Regulation. Further, this description will include information from which it may be determined that the distribution of commodities in the recipient country will not result in a substantial disincentive to domestic production and

that adequate storage facilities will be available in the recipient country at the time of arrival of the commodity to prevent spoilage or waste of the commodity. For preparation of the Operational Plan, see appendix I to this regulation. If a cooperating sponsor submits a multi-year Operational Plan that is approved by A.I.D., the Operational Plan provided with an AER each subsequent year should cover only those components or features which require updating or the cooperating sponsor proposes to change. A.I.D. will issue guidance each year regarding Operational Plans that must be submitted by cooperating sponsors. Within the limits of the total amount of commodities, monetized proceeds and program income approved by A.I.D. in the Operational Plan, the cooperating sponsor may increase or decrease by not to exceed 10 percent the amount of commodities, monetized proceeds or program income allocated to approved program categories or components of the Operational Plan. Such adjustments must be identified specifically in the annual report submitted by a cooperating sponsor under § 211.10(b) of the Regulation. A cooperating sponsor may not otherwise deviate from the Operational Plan without the prior written approval of A.I.D.

(b) *Program supervision.* Cooperating sponsors shall provide adequate supervisory personnel for the efficient operation of the program, including personnel to:

(1) Plan, organize, implement, control, and evaluate programs involving distribution of commodities or use of monetized proceeds and program income,

(2) Make warehouse inspections, physical inventories, and end-use checks of food or funds, and

(3) Review of books and records maintained by recipient agencies that receive monetized proceeds and/or program income.

Cooperating sponsors shall be represented by a person resident in the country of distribution or other nearby country approved by AID/W, who is appointed by and responsible to the cooperating sponsor for distribution of

commodities or use of monetized proceeds or program income in accordance with the provisions of this regulation.

(c) *Audits*—(1) *By nongovernmental cooperating sponsors*. A nongovernmental cooperating sponsor shall arrange for periodic audits to be conducted in accordance with OMB Circular A-133, including the OMB Compliance Supplement and the Statement of Position Regarding Circular A-133 developed by the American Institute of Certified Public Accountants. Nongovernmental recipient agencies shall be treated as subrecipients under OMB Circular A-133, and governmental recipient agencies shall furnish the cooperating sponsor audits in accordance with the standard in paragraph (c)(2) of this section. The cooperating sponsor may satisfy these audit responsibilities with respect to recipient agencies by relying on independent audits performed of recipient agencies or on appropriate procedures performed by the cooperating sponsor's internal audit or program staff, by expanding the scope of the independent financial and compliance audit of the cooperating sponsor to encompass testing of recipient agency charges, or by a combination of these procedures. The Generally Accepted Commodity Accounting Principles issued by Food Aid Management, an association of cooperating sponsors, may be used for commodity accounting.

(2) *By governmental cooperating sponsors*. A governmental cooperating sponsor shall ensure that an audit satisfactory to A.I.D. is conducted annually with respect to donated commodities and monetized proceeds, if commodity sales are authorized under the agreement with A.I.D., including commodities and monetized proceeds transferred to or used by recipient agencies. The audit shall be a financial audit performed by the country's principal government audit agency or another audit agency or firm acceptable to A.I.D. This audit should be conducted in accordance with generally accepted government auditing standards issued by the United States General Accounting Office, or auditing standards that have been prescribed by the laws of the country or adopted by public accountants or an association of public accountants in the country, or Auditing

Standards promulgated by the International Organization of Supreme Audit Institutions or International Auditing Practices Committee of the International Federation of Accountants. Both the auditor and the auditing standards to be used by the cooperating sponsor must be acceptable to A.I.D. The cooperating sponsor may satisfy its audit responsibility with respect to recipient agencies by relying on independent audits of the recipient agency or on appropriate procedures performed by internal audit or program staff of the cooperating sponsor, by expanding the scope of the independent financial audit of the cooperating sponsor to encompass testing of recipient agency charges or actions, or by a combination of these procedures. Recipient agencies that receive less than \$25,000 of donated commodities and/or monetized proceeds are excluded from the cooperating sponsor's audit responsibility.

(d) *Commodity requirements; AER*. Each cooperating sponsor shall submit to USAID or the Diplomatic Post, within such times and on the AER form prescribed by AID/W, estimates of requirements showing the quantities of commodities required for each program proposed.

(e) *No military distribution*. Except as A.I.D. may otherwise agree in writing, agricultural commodities donated by A.I.D. shall not be distributed, handled or allocated by any military forces.

(f) *Determination of eligibility of recipients*. Cooperating sponsors shall be responsible for determining that the recipients and recipient agencies to whom they distribute commodities are eligible in accordance with the Operational Plan or TA and this Regulation. Cooperating sponsors shall impose upon recipient agencies responsibility for determining that the recipients to whom they distribute commodities or provide assistance with monetized proceeds or program income are eligible. Commodities shall be distributed free of charge except as provided in paragraphs (j) and (k) of this section or as otherwise authorized by AID/W,

but in no case will recipients be excluded from receiving commodities because of inability to make a contribution to the cooperating sponsor for any purpose.

(g) *No discrimination.* Cooperating sponsors shall distribute commodities to and conduct operations (with food, monetized proceeds, or program income) only with eligible recipient agencies and eligible recipients without regard to political affiliation, geographic location, ethnic, tribal or religious identity or other factors extraneous to need and the eligibility criteria set forth in the approved Operational Plan or TA, and shall impose similar conditions upon recipient agencies.

(h) *Public recognition.* To the maximum extent practicable, and with the cooperation of the host government, adequate public recognition shall be given in the press, by radio, and other media that the commodities or assistance financed by monetized proceeds or program income have been provided through the friendship of the American people as food for peace. At distribution and feeding centers or other project sites the cooperating sponsor shall, to the extent feasible, display banners, posters, or similar media which shall contain information similar to that prescribed for containers in paragraph (i) of this section. Recipients' individual identification cards shall, insofar as practicable, be imprinted to contain such information.

(i) *Containers—(1) Markings.* Unless otherwise specified in the Operational Plan or TA, when commodities are packaged for shipment from the United States, bags and other containers shall be marked with the CCC contract number or other identification, the A.I.D. emblem and the following information stated in English:

- (i) Name of commodity;
- (ii) Provided through the friendship of the American people as food for peace;
- (iii) Not to be sold or exchanged (where applicable).

(2) *Disposal of containers.* Cooperating sponsors may dispose of containers, other than containers provided by carriers, in which commodities are received in countries having approved

title II programs, by sale or exchange, or may distribute the containers free of charge to eligible food or fiber recipients for their personal use. If the containers are to be used commercially, the cooperating sponsor must arrange for the removal, obliteration, or cross out of the U.S. Government markings from the containers prior to such use.

(j) *Monetization programs.* Provisions of this Regulation that prohibit or restrict the sale of commodities or require marking or labeling of containers do not apply to the extent the sale of commodities is approved by A.I.D. Cooperating sponsors are not required to monitor, manage, report on or account for the distribution or use of commodities after title to the commodities has passed to buyers or other third parties pursuant to a sale under a monetization program and all sales proceeds have been fully deposited in the special interest-bearing account established by the cooperating sponsor for monetized proceeds. However, the receipt and use of sales proceeds must be monitored, managed, reported and accounted for as provided in this Regulation, with special reference to paragraphs (k) and (l) of this section, and §211.10. It is not mandatory that commodities approved for monetization be imported and sold free from all duties and taxes, but nongovernmental cooperating sponsors may negotiate agreements with the host government permitting the tax-free import and sale of such commodities. Even where the cooperating sponsor negotiates tax-exempt status, the prices at which the cooperating sponsor sells the commodities to the purchaser should reflect prices that would be obtained in a commercial transaction, *i.e.*, the prices would include the cost of duties and taxes, except as A.I.D. may otherwise agree in writing. Thus, the amounts normally paid for duties and taxes would accrue for the benefit of the cooperating sponsor's approved program. Cooperating sponsors should refer to the "Monetization Field Manual" for more comprehensive guidance on setting the sales price. A copy of the Monetization Manual may be obtained from AID/W-FHA/PPE, Washington, DC 20523.

(k) *Use of funds.* (1) Nongovernmental cooperating sponsors and recipient

agencies may use monetized proceeds and program income to:

(i) Transport, store, distribute and otherwise enhance the effectiveness of the use of donated commodities and products thereof, including construction or improvement of storage facilities or warehouses, handling, insect and rodent control, payment of personnel employed or used by the cooperating sponsor or recipient agencies in support of approved programs;

(ii) Implement income generating, community development, health, nutrition, cooperative development, agricultural and other developmental activities agreed upon by A.I.D. and the cooperating sponsor;

(iii) Make investments, with the approval of A.I.D., and any interest earned on such investments may be used for purposes described in paragraphs (k)(l) (i) and (ii) of this section;

(iv) Improve their financial and other management systems; and

(v) Pay indirect costs of the cooperating sponsor that are allocable to the monetization program at the indirect cost rate approved by A.I.D. for the cooperating sponsor, the direct and indirect costs of an office maintained by the cooperating sponsor in the country where the monetization program is conducted that are allocable to the title II program there, and the costs of a regional office maintained by a cooperating sponsor that are allocable to the cooperating sponsor's effort to enhance the effectiveness of the use of commodities provided by A.I.D. under title II.

(2) Monetized proceeds and program income may be used by the cooperating sponsor and recipient agencies only for the purposes described in the Operational Plan or TA, or otherwise approved by A.I.D., in writing, and only for such costs as would be allowable under OMB Circular A-122, as amended, "Cost Principles for Nonprofit Organizations". A recipient agency may use not to exceed \$500 per year of voluntary contributions for institutional, community or social development or other humanitarian purposes without regard to the Operational Plan or TA or OMB Circular A-122.

(3) Governmental cooperating sponsors shall use monetized proceeds and

program income only for emergency purposes as described in the TA with respect to such programs.

(4) Monetized proceeds and program income may not be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.

(5) Except as A.I.D. may otherwise agree in writing, monetized proceeds may not be used to finance the production for export of agricultural commodities, or products thereof, that would compete in the world market with similar agricultural commodities, or products thereof, produced in the United States, if such competition would cause substantial injury to the United States producers, as determined by A.I.D.

(6) (i) The cooperating sponsor shall use commercially reasonable practices in construction activities and in purchasing goods and services with monetized proceeds or program income; maintain a code of standards of conduct regarding conflicts of interest; carry out procurement transactions in a manner to provide open and free competition to the maximum extent practicable; and maintain and make available to A.I.D. in accordance with §211.10 records and documents regarding the procurement of goods and services with monetized proceeds and program income. Cooperating sponsors shall follow their own requirements relating to bid guarantees, performance bonds and payment bonds when program income or monetized proceeds are used to finance construction or the improvement of facilities, but shall consult with USAID or the Diplomatic Post regarding such requirements when the estimated cost of such construction or improvements exceeds \$100,000. Title to real and personal property shall be vested in the cooperating sponsor, except as provided in the Operational Plan or TA or as A.I.D. may otherwise agree in writing, subject to the requirements of §211.11 upon termination of the program.

(ii) Monetized proceeds and program income may not be used to acquire, construct, alter or upgrade land, buildings or other real property improvements that are used in whole or in part

for sectarian purposes or which are owned or managed by a church or other organization engaged exclusively in religious activity. Notwithstanding the preceding sentence, monetized proceeds or program income may be used to finance repair or rehabilitation of an existing structure owned or managed by a church or organization engaged exclusively in religious activity to the extent necessary to avoid spoilage or loss of donated commodities, provided that the structure is not used in whole or in part for any sectarian purpose while donated commodities are stored in it. The use of monetized proceeds or program income to finance construction of such a structure may be approved in the Operational Plan or TA or by USAID or the Diplomatic Post if the structure is needed and will be used for the storage of donated commodities for a sufficient period of time to warrant the expenditure of monetized proceeds or program income and the structure will not be used for any sectarian purpose during this period.

(l) *Report on funds.* The cooperating sponsor (headquarters, if there is more than one office) shall annually provide AID/W a report on the receipt and disbursement of all monetized proceeds and program income by cooperating sponsors and recipient agencies. This report should include the source of the funds, by country, and how the funds were used. This annual report should be submitted to AID/W by December 31 of each calendar year for the fiscal year ending September 30 of that calendar year.

(m) *No displacement of sales.* Except in the case of emergency or disaster situations, the donation of commodities furnished for these programs shall not result in increased availability for export by the recipient country of the same or like commodities and shall not interfere with or displace sales in the recipient country which might otherwise take place. A country may be exempt from this proviso if circumstances warrant. USAIDs should seek AID/W guidance on this matter.

(n) *Commodities borrowed or exchanged for programs.* After the date of the program approval by AID/W, but before arrival at the distribution point of the commodities authorized, the cooper-

ating sponsor may, with prior approval of USAID or the Diplomatic Post, borrow the same or similar commodities from available sources to meet program requirements provided that:

(1) Borrowed commodities which are used in accordance with the terms of the Operational Plan or TA will be replaced with commodities transferred by A.I.D. The amount of commodities transferred to replace borrowed commodities shall be established by mutual agreement between the cooperating sponsor and USAID or the Diplomatic Post and will be determined on the basis of equivalent value at the time and place of transfer or on some other justifiable basis proposed by the cooperating sponsor and acceptable to USAID or the Diplomatic Post;

(2) Packaged commodities which are borrowed shall be appropriately identified insofar as practicable in the language of the country of distribution as having been provided through the friendship of the American people as food for peace; and

(3) Suitable publicity shall be given to the exchange of commodities as provided in paragraph (h) of this section and containers for borrowed commodities shall be marked to the extent practicable in accordance with §211.6(c).

(o) *Commodity transfer between programs.* After the date of program approval by AID/W, but before distribution of the commodities, USAID or the Diplomatic Post (or the cooperating sponsor with prior approval of USAID or the Diplomatic Post) may transfer commodities between approved title II programs to meet emergency disaster requirements or to improve efficiency of operation, such as to meet temporary shortages due to delays in ocean transportation or provide for rapid distribution of stocks in danger of deterioration. Transfers also may be made to disaster organizations for use in meeting exceptional circumstances. Commodity transfers shall be made at no cost to the U.S. Government and with the concurrence of the cooperating sponsor and disaster relief organization concerned. A USAID or Diplomatic Post with funds available, however, may pay the costs of transfers to

meet extraordinary relief requirements, and AID/W shall be advised promptly of the details of the transfer. Commodities transferred between programs shall not be replaced by the U.S. Government unless AID/W authorizes such replacement.

(p) *Disposal of excessive stock of commodities.* If commodities are on hand which cannot be utilized in accordance with the approved Operational Plan or the TA, the cooperating sponsor shall promptly advise USAID or the Diplomatic Post of the quantities, location and condition of such commodities, and where possible, shall propose an alternate use of the excess stocks; USAID or the Diplomatic Post shall determine the most appropriate use of the excess stocks, and with prior AID/W concurrence, shall issue instructions for disposition. Transportation costs and other charges attributable to transferring commodities from one program to another within the country shall be the responsibility of the cooperating sponsor, except that in case of disaster or emergency, AID/W may authorize the use of disaster or emergency funds to pay for the costs of such transfers. (For discussion of unfit commodity disposal, see §211.8.)

(q) *Trilateral exchange programs.* The restrictions in this Regulation regarding the distribution, use or labeling of commodities shall not apply to commodities furnished by CCC in exchange for other commodities obtained from third parties (“exchanged commodities”) to be distributed in a recipient country under a trilateral exchange program. Except as A.I.D. and the cooperating sponsor may otherwise agree in writing, title to the exchanged commodities will pass to the cooperating sponsor upon delivery to and acceptance by the cooperating sponsor at the point of delivery specified in the Operational Plan or TA. After title passes to the cooperating sponsor the exchanged commodities shall be deemed “commodities” covered by this Regulation with respect to all post-delivery obligations of the cooperating sponsor contained in this Regulation, including obligations regarding labeling to the extent practicable, distribution, monitoring, reporting, accounting and use of commodities or monetized proceeds

resulting from their sale. In the event of difficulty in satisfying the labeling requirement, the cooperating sponsor will consult with USAID or the Diplomatic Post for guidance.

(r) *Landing.* Governmental cooperating sponsors shall permit donated commodities to be discharged notwithstanding any dispute or question concerning quality, quantity, or other matters relating to the commodity itself. Any such dispute or question shall be resolved in accordance with procedures stated in this Regulation or in the relevant shipping or other contracts, as applicable.

#### **§211.6 Processing, repackaging, and labeling commodities.**

(a) *Commercial processing and repackaging.* Cooperating sponsors or their designees may arrange for processing commodities into different end products and for packaging or repackaging commodities prior to distribution. Commodities may be bartered, or monetized proceeds or program income may be used, to offset such costs if provided for in the Operational Plan or TA or approved by USAID or the Diplomatic Post. When commercial facilities are used for processing, packaging or repackaging, cooperating sponsors or their designees shall enter into written agreements for such services and copies of the agreements must be provided to USAID or the Diplomatic Post. Except as AID/W otherwise agrees, the executed agreements shall provide as a minimum that the party providing such services shall:

(1) Fully account to the cooperating sponsor for all commodities delivered to the processor’s possession and shall maintain adequate records and submit periodic reports pertaining to the performance of the agreement;

(2) Be liable for the value of all commodities not accounted for as provided in §211.9(e);

(3) Return or dispose of the containers in which the commodity is received from the cooperating sponsor according to instructions from the cooperating sponsor; and

(4) Plainly label carton, sacks, or other containers containing the end product in accordance with paragraph (c) of this section.